


PRE-APPEAL BRIEF REQUEST FOR REVIEW		Docket Number Q78536	
Mail Stop AF Commissioner for Patents P.O. Box 1450 Alexandria, VA 22313-1450	Application Number 10/717,667	Filed November 21, 2003	
	First Named Inventor Andreas KASZKIN		
	Art Unit 2435	Examiner Thanhnga B TRUONG	
<p style="text-align: center;">WASHINGTON OFFICE 23373 CUSTOMER NUMBER</p>			
<p>Applicant requests review of the final rejection in the above-identified application. No amendments are being filed with this request.</p> <p>This request is being filed with a notice of appeal</p> <p>The review is requested for the reasons(s) stated on the attached sheet(s). Note: No more than five (5) pages may be provided.</p> <p><input checked="" type="checkbox"/> I am an attorney or agent of record. Registration number <u>56,616</u></p> <div style="text-align: right;">  Signature </div> <div style="text-align: right;"> <u>Nataliya Dvorson</u> Typed or printed name </div> <div style="text-align: right;"> <u>(202) 293-7060</u> Telephone number </div> <div style="text-align: right;"> <u>November 21, 2008</u> Date </div>			

PATENT APPLICATION

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

In re application of

Docket No: Q78536

Andreas KASZKIN, et al.

Appln. No.: 10/717,667

Group Art Unit: 2435

Confirmation No.: 9058

Examiner: Thanhnga B TRUONG

Filed: November 21, 2003

For: PROCESS AUTOMATION SYSTEM AND PROCESSING APPLIANCE FOR ONE
SUCH PROCESS AUTOMATION SYSTEM

PRE-APPEAL BRIEF REQUEST FOR REVIEW

MAIL STOP AF - PATENTS

Commissioner for Patents

P.O. Box 1450

Alexandria, VA 22313-1450

Sir:

Pursuant to the Pre-Appeal Brief Conference Pilot Program, and further to the Examiner's Final Office Action dated August 21, 2008, Applicant files this Pre-Appeal Brief Request for Review. This Request is also accompanied by the filing of a Notice of Appeal.

Appellant turns now to the rejections at issue: claims 1-5 and 7 are rejected under 35 U.S.C. § 103(a) as being unpatentable over U.S. Patent No. 6,507,856 to Chen et al. (hereinafter "Chen") in view of U.S. Patent No. 5,109,152 to Takagi et al. (hereinafter "Takagi"). Appellant respectfully requests reversal of this rejection at least in view of the following comments.

Of these rejected claims, only claims 1 and 7 are independent. Independent claim 1 *inter alia* recites: "wherein some but less than all of the data are exchanged in an encrypted form, wherein, in at least a first of the process devices, a communication device determines by hard wiring or programming which of transmission data are encrypted in an encryption device of the

first process device, and wherein, in at least a second of the process devices, the communication device recognizes which of reception data are encrypted and decrypts the reception data in a decryption device of the second process device.” Independent claim 7 *inter alia* recites:

“wherein the communication device comprises an encryption device, a decryption device, and means for determining by hard wiring or programming which of transmission data are encrypted in the encryption device and means for recognizing which of reception data are encrypted and decrypting the encrypted reception data in the decryption device.”

In an exemplary, non-limiting embodiment, only data requiring security is transmitted in encrypted form with the other data being transmitted unencrypted. That is, only some of the transmitted data is encrypted while other data is transmitted in an unencrypted format. The communication device will determine which data to encrypt and the receiving device will distinguish between the encrypted and unencrypted data. It will be appreciated that the foregoing remarks are not necessarily limitative of any claims.

Chen, on the other hand, relates to a system for exchanging and merging messages over a network (*see* Abstract and col. 1, line 35 to col. 14). Chen discloses encoding and not encrypting a purchase order, PO (col. 4, lines 58 to 67). Contrary to the Examiner’s allegations (*see* Continuation Sheet of the Advisory Action), encoding, which is converting plain text into XML, is not the same as encrypting *i.e.*, transforming data to make it unreadable without a key. For example, encoded data can further be encrypted and as such the two processes cannot be identical, as is well known in the art. That is, Chen only discloses converting plain text (purchase

order PO) into XML code, *i.e.*, encoding the PO. Chen, however, is unrelated to encryption *i.e.*, transforming data so that it is unreadable to anyone without a key. One of ordinary skill in the art would not take from Chen's disclosure of encoding any teaching or suggestion regarding the claimed encryption.

Furthermore, Chen does not disclose process devices exchanging some but less than all data in the encrypted form, thereby determining by hard wiring or programming which of transmission data are to be encrypted and recognizing which of reception data are encrypted and have to be decrypted. In other words, Chen is unrelated to encrypting only some of the transmitted data and having a device that will analyze the received data and distinguish between encrypted and unencrypted data in these received data. In short, Chen does not disclose or suggest identifying which of the received data needs to be encrypted.

The Examiner alleges that if a partial invoice is transmitted, then only part of the data is encrypted (*see* Continuation Sheet if the Advisory Action). The Examiner's position is incorrect because if only a partial invoice is being transmitted then all of the transmitted data (because only the partial invoice is transmitted) is encrypted. In fact, in Chen, encoding only some of the transmitted data would make no sense because the data could not be provided to the user. In other words, in Chen, the plain purchase order is encoded in XML format for the purpose of providing the data to the user. If a portion of the data is not encoded, then it cannot be displayed to the user and there is no reason to transmit it. In other words, Chen simply discloses encoding

all of the data that is being transmitted. It provides no teaching whatsoever for encoding only some of the transmitted data.

The Examiner alleges that Chen's abstract, Figures 5 and 6, column 3, lines 35-49, and column 4, lines 57-58 disclose that in the known system "some but less than all data are exchanged in encrypted form" (*see* page 2 of the Final Office Action). However, Chen is unrelated to encryption (the plain, ordinary meaning of which is encipherment, making secret) but instead refers to encoding (the plain, ordinary meaning of which is to convert format which may or may not be secure). That is, Chen only discloses encoding generally and not the claimed, specific species of encoding *i.e.*, encryption. Moreover, Chen uses the term encoding only in the context of XML, which means converting plain text into XML code. Thus, Chen neither discloses nor suggests encryption. In addition, there is no suggestion in Chen that only some of the data is encoded.

Takagi discloses a conventional communication apparatus where a first communication device is a card terminal and a second communication device is an IC card. In FIG. 9 of Takagi, a card terminal 400 includes a random number generation means 401 which generates a random number R, a first computation means 402 which performs a functional computation F_1 for first confidential data K_1 and first encryption means 404 which encrypts the data sent out from said first processing means by using a first encryption key KE_1 , second decryption means 405 which decrypts encrypted data entered from the IC card 450 by using a second decryption key KD_2 . In Takagi, the IC card 450 which exchanges information with the card terminal 400 comprises

second computation means 452 which performs a functional computation F_2 for second confidential data K_2 and first decryption means 454 which decrypts encrypted data entered from the card terminal 400 by using a first decryption key KD_1 , and second encryption means 455 which encrypts the data sent out from said second processing means 456 by using a second encryption key KE_2 (col. 1, lines 17 to 43). Takagi, however, is related to preventing faking of the IC card or card terminal (*see* Abstract and col. 1, lines 5 to 43). In other words, Takagi is unrelated to an automation system. That is, Takagi relates to IC cards and not to a process automation system.

In addition, Takagi clearly shows encryption and decryption of all data which is exchanged between an IC card 450 and a card terminal 400 (Fig. 9). Takagi does not teach exchanging some but less than all data in encrypted form. In other words, Takagi is unrelated to encrypting only some of the transmitted data and having a device that will analyze the received data and distinguish between encrypted and unencrypted data in these received data. In Takagi, the IC terminal or card does not distinguish between the encrypted and unencrypted data. In short, Takagi does not disclose or suggest identifying which of the received data needs to be encrypted.

For at least these exemplary reasons, claims 1 and 7 are patentable over Chen in view of Takagi. Accordingly, Appellant respectfully requests the withdrawal of this rejection of claims 1 and 7. Claims 2-5 are patentable at least by virtue of their dependency on claim 1.

Claim 6 is rejected under 35 U.S.C. § 103(a) as being unpatentable over Chen in view of Takagi and further in view of U.S. Patent No. 6,115,646 to Fiszman (hereinafter “Fiszman”).

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Fizzman fails to cure the deficient disclosure of Chen and Takagi. Since claim 6 depends on claim 1, it is patentable at least by virtue of its dependency. Accordingly, Appellant respectfully requests that this rejection is also withdrawn.


Respectfully submitted,

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